

MWPAAC Engineering & Planning Subcommittee

FINAL DRAFT

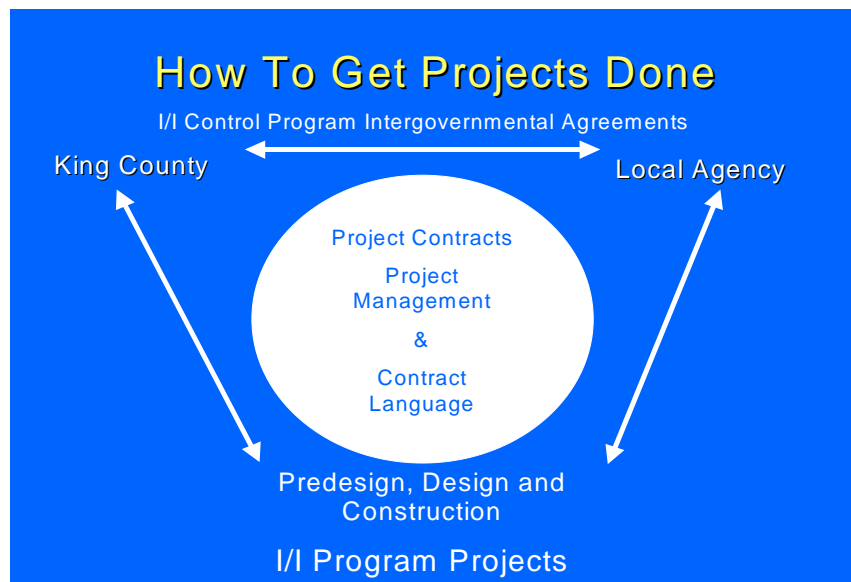
Intergovernmental Agreement (IGA)

REGIONAL I/I CONTROL PROGRAM INTERGOVERNMENTAL AGREEMENT

INTRODUCTION

This Intergovernmental Agreement (IGA) chapter provides the Local Agencies and King County with a model for the specific agreements that will be necessary between King County and a Local Agency to successfully manage an I/I reduction project. This chapter starts with this introduction and is followed by a model/template IGA. A guidance table that indicates eligibility for I/I program funding concludes this section.

The model/template IGA makes available standard clauses and choices of language that may or may not be included in an actual IGA. An IGA is intended to be an agreement between governments, specifically a particular Local Agency and King County, and not between the I/I reduction project manager and a contractor. The following schematic shows both of these relationships:



An intergovernmental agreement will be necessary regardless of whether the I/I reduction project is managed and administered by the Local Agency or by King County, thus the model/template IGA provides alternative language for both scenarios.

The IGA alternatives were originally evaluated by the E&P Subcommittee, and a working draft model/template IGA was drafted in 2002 out of those discussions and decisions. The analysis of alternatives for that working draft IGA was a complex undertaking, one that required Local Agency representatives (on the E&P Subcommittee) and King County to make choices related to implementing a Regional I/I Control Program. Many of the language options raised fundamental decisions of managing and administering I/I reduction projects within particular Local Agencies.

The working draft IGA was used during the pilot projects, with modifications made as necessary. Based on those modifications, the Earth Tech consultant team included revisions to the

model/template IGA. The E&P Subcommittee discussed the modifications and approved the final draft model/template IGA that appears below. Specific policies and terms of any IGA are of course open to discussion and decision by each Local Agency and King County.

It is worth noting that several items are not included in this IGA chapter because it is believed that they do not affect I/I reduction. These IGA topics are:

1. Patents
2. Americans with Disability Act
3. Legal Relation (Indemnification)
4. Termination
5. Miscellaneous
6. Entire Agreement Section

AMENDMENT NO. ____ TO UTILITIES COOPERATION AGREEMENT BY
AND BETWEEN
<Local Agency>
AND
KING COUNTY
FOR INFILTRATION/INFLOW CONTROL PROJECT

THIS AMENDMENT NO. ---- is made and entered into this _____ day of _____ between the City/District of _____ (hereinafter, “_____”) and King County, a home rule charter county in the State of Washington, acting through its Department of Natural Resources and Parks (hereinafter, “the County” or “DNRP”).

WHEREAS, the parties desire to reduce I/I from both the <Local Agency> systems and the King County conveyance and treatment systems in order to enhance environmental and public health benefits and in order to improve system capacity conditions; and

WHEREAS, <Local Agency> and King County have cooperatively developed a Regional I/I Control Program, the intent of which has been to establish a regional plan for developing technical, policy, and financial means for reducing I/I in the regional system; and

WHEREAS, King County desires to work with <Local Agency> to investigate the sewer system and reduce infiltration and/or inflow as a means to reduce flows to the King County conveyance and treatment systems; and

WHEREAS, <Local Agency> desires to control infiltration and inflow into their Local wastewater system and thereby reduce sewer flows that enter the regional wastewater system; and

WHEREAS, the parties desire to designate management and administrative responsibility and determine funding; and

WHEREAS, <City/District> _____ and King County entered into an Agreement dated _____, regarding participation in the County Infiltration/Inflow (I/I) Program Study, and

WHEREAS, the Parties desire to amend the prior Agreement by this Amendment No. _____.

NOW, THEREFORE, the parties do Agree as follows: The prior Agreement is modified, altered, and changed in the following respects only:

MODIFICATIONS AND INSERTIONS
<Applicable when either the Local Agency or the County is the Lead Agency>

Addition to Section 1: Purpose and Duration of the original Agreement

Section 1: Purpose and Duration

1.4 Purpose of Amendment

<Clause “a” when Local Agency is the lead>

- a. The purpose of the Amendment is to provide for <Local Agency> management and administration of the project and to further provide for King County funding of the project and oversight of <Local Agency> management and administration responsibilities.

<Clause “a” when County is the lead>

- a. The purpose of the Amendment is to provide for King County management, administration and funding of the project and assign certain specific duties and oversight to <Local Agency>.
- b. In order to quantify the effectiveness of the rehabilitation work performed within the project area, King County may conduct pre and post-construction flow monitoring
- c. To maintain that project work will take place and be completed by <date>.

1.5 Sharing Information

The Parties agree that in order to maximize the efficiency of the I/I reduction projects, the Parties, to the extent allowable by <Local Agency> and King County policy, will share all pertinent information, especially as-built information related to the I/I reduction project, including but not limited to: design, cost estimates, specifications, bid documents, Geographic Information Systems (GIS), Sanitary Sewer Evaluation System (SSES), flow data, modeling, surveying information, citizen concerns and issues, etc.

Note: The pilot projects showed that inaccurate or non-existent as-builts led to concerns and necessitated much greater investigations.

Note: The pilot projects showed that regular construction meetings including both the County and the Local Agency were needed to avoid conflicts and concerns from arising.

1.6 Uniform Record Keeping and Constructed Drawings

The Parties agree to the goal that databases, information, records and constructed drawings will be in an electronic form mutually agreed upon and usable by the other party.

1.7 Sharing Materials and Equipment

The Parties agree to share materials and equipment to the extent possible in order to provide as efficient and cost effective a project as possible.

1.8 Standards, Procedures, Policies

The Parties agree that in order to maintain consistency, fairness, and quality projects that are effective in removing I/I and that benefit the Regional I/I Control Program, the Parties will use, at a minimum, the I/I Control Program Standards, Procedures, and Policies during the design and construction of this project.

<Use the following Modifications and Insertions when the Local Agency is the Lead Agency>

1.9 Changes in Scope of Work, Cost and/or Conditions

The Parties agree that change orders for scope of work, costs and/or changes in conditions will not result in an increased contribution to the project budget by the County. The financial contribution by King County to the project shall be _____ dollars (\$_____) (Exhibit B). If one or more change orders result in significant cost increases to the project, the project scope of work will be re-evaluated and changed as necessary and as approved by both <Local Agency> and the County to ensure that the project budget stays within approved limits. If any single change order would result in or make necessary multiple similar change orders at other sites throughout the project basin, the initial change order shall be reviewed and approved by both <Local Agency> and the County. The Project Cost Estimate (Exhibit B) includes a 10% contingency for change orders for scope of work, costs, and/or for changes in conditions.

1.10 Ownership of Improvements

There will be no changes in facilities ownership due to any project improvements made, even if the improvements are made to private property.

1.11 Associated Agencies

Both parties will take steps necessary to inform and include <Associated Agency> in I/I reduction projects, including <be specific, e.g., communications, approvals, and involvement>.

Note: This section was not included in the original IGA template or in the actual IGA's for the pilots and was recommended as a valuable addition.

Addition to Section 2: County Responsibility of the Original Agreement
Section 2: King County Responsibilities

2.8 Environmental Review Process

<Local Agency> agrees to prepare an Environmental Review Document highlighting the I/I Program with specific information about this project.

2.9 Securing Applicable Permits

<Local Agency> shall be responsible for securing all applicable local permits for the project including but not limited to SEPA, building, right of way, grading, utility, shorelines and critical areas permits.

2.10 Financial Provisions

The County agrees to reimburse <Local Agency> on a monthly basis for approved direct costs and expenses invoiced during the previous month by the Contractor to the District per Exhibit A "Scope of Work." The reimbursed costs are not to exceed a total of _____ dollars (\$_____) unless agreed to in writing by King County's program manager and <Local Agency>. Costs eligible for reimbursement are construction costs directly related to I/I removal within the scope of work of the project (Exhibit A), including but not limited to road overlay,

post-construction restoration and private property restoration. Construction work done in conjunction with I/I project work such as system or capacity upgrades or projects <Local Agency> wishes to include for its own purposes, such as separations of shared side sewers, will not be eligible for reimbursement from King County. Where storm drain disconnections from the sanitary sewer are necessary, the property owner shall be responsible for the re-routing of any disconnected and unauthorized drains. Costs to re-route storm drainage will not be eligible for reimbursement by the County. The County shall not pay <Local Agency> for costs and expenses attributed to consultant services, contract procurement, administration and management or non-I/I related construction activity. The County agrees to make payment within forty-five (45) days of billing by the <Local Agency>.

Note: Experience from the pilots indicates that financial responsibilities need to be established and agreed to by the Parties prior to beginning construction.

2.11 Pre and Post-Flow Monitoring

The County intends to conduct flow monitoring to quantify the effectiveness of the rehabilitation work performed within the project area. The flow monitoring may take place in multiple locations within the mini-basin both before and after I/I Control work has occurred. This work will occur between _____ and _____. The County agrees to share with <Local Agency> the results of all flow monitoring.

Addition to Section 3: Local Agency Responsibility of the Original Agreement

Section 3: Local Agency Responsibilities

3.7 Scope of Work

<Local Agency> will act as Lead Agency, and manage and administer the project. The project scope of work is attached hereto as Exhibit A "Scope of Work". If additional information is necessary to allow the project to function effectively, specific requests will be made in writing to <Local Agency>. A service map showing the area to be covered by this project is attached as part of Exhibit A.

Note: Some provision should be made to fix non-I/I related components when that is necessary to conduct I/I rehabilitation.

3.8 Entering Contracts with Contractor

<Local Agency> agrees to enter into contracts as necessary to complete the project per approved scope of work (Exhibit A). The County's consulting team will perform engineering and design oversight for bidding and engineering assistance to <Local Agency> and its consultants on the contractor hiring process. <Local Agency> will advertise in accordance with <Local Agency> procedures and will formulate bid tabs. The County will work with <Local Agency> if broader advertisement in national or out of state publications is desired. The County will print bid documents and <Local Agency> or its consultant will mail and distribute them.

3.9 Insurance

<Local Agency> shall require its contractor(s) to procure, maintain and provide evidence of coverage, including endorsements naming King County, its officers, officials, employees and agents as additional insured.

3.10 Contract Administration and Inspection

As the Lead Agency, <Local Agency> will be responsible for project inspection. <Local Agency> will provide a full time <Local Agency> Inspector with the authority to administer the contract. <Local Agency> will also designate an alternate <Local Agency> contact ("Alternate Inspector") with the authority to administer the contract in the absence of the <Local Agency> Inspector on site. King County or its designee inspector will be responsible for oversight inspection of the project in order to verify pay quantities and compliance with contract plans and specifications. Should the County representative identify a discrepancy or variance from the approved plans and specifications, the County representative shall contact the <Local Agency> Inspector first and if unavailable, then the Alternate Inspector second and the <Local Agency> designated third to implement the necessary correction. If the <Local Agency> Inspector, the Alternate Inspector and the <Local Agency> designated third are all unavailable, the King County representative shall have authority to administer the contract and implement the necessary corrective action. The <Local Agency> Inspector and Alternate Inspector(s) shall be trained in trenchless technology inspection.

Note: Project experience showed that lack of clear chain of command paths led to confusion and conflicts, therefore, this area needs to be clearly established.

3.11 Securing Private Property Side Sewer Replacement Agreements

- a. <Local Agency> shall be responsible for securing all private property side sewer replacement agreements (right of entry) with property owners.
- b. <Local Agency> or its Contractor shall obtain a release from the property owner upon completion of restoration. In the event <Local Agency> determines that the restoration work done by the Contractor is reasonable and in compliance with the terms of contract, then the requirement to obtain a release can be waived. Written documentation shall be provided to King County in any case where a waiver from the release provision is granted.

3.12 Program Funding/Record Keeping

- a. <Local Agency> agrees to provide additional funds for this project. These additional funds will pay for all encumbrances associated with this project excluding costs associated with King County staff and its consultants. King County will reimburse <Local Agency> for up to \$_____ for eligible construction costs associated with the project.
- b. <Local Agency> shall maintain accounting records for work done on the project
- c. As part of the County's I/I Program, <Local Agency> shall continue, through completion of the project even after the County's funds have been fully expended, to send monthly progress reports to the County detailing work accomplished and dollars spent on the project by contractors, <Local Agency> or its consultants. Accounting records shall include documentation of all costs related to the project, including but not limited to contractor costs, restoration costs, district staff labor and consultant labor and expenses.
- d. For reimbursement of construction costs by King County, <Local Agency> shall review the Contractor's invoices and provide to the County a monthly progress report and pay request for approved project costs. Each progress report shall include a concise written summary of the work accomplished on the project during the past month. The pay request shall be based on a schedule of values for each work task to be performed. The pay request shall indicate the contract budget for each task, the percent complete at the end of

the month, the amount previously paid and the amount due for the current period including all change orders.

- e. <Local Agency> shall maintain records in compliance with State of Washington financial audit requirements. For this project <Local Agency> is subject to an audit by the County.

3.13 Community Coordination and Communications

<Local Agency> and the County agree to jointly determine their roles for community coordination and communications for the project, and to jointly develop a public information/education plan for this project. The County agrees to assist in producing materials for public distribution.

Addition to Section 4: Indemnification of the Original Agreement

Section 4: Indemnification

4.3 <Local Agency> agrees to limit the County's liability for work or product to end at the end of the Contractor's warranty period.

<Use the “Modification to Section 7: Notice of the Original Agreement” that appears at the end of this document>

<Use the following Modifications and Insertions when the County is the Lead Agency>

1.9 Changes in Scope of Work, Cost and/or Conditions

The Parties agree that change orders for scope of work, costs, and/or for changes in conditions will be handled through use of an established change order process as approved in writing by King County.

1.10 Contract Administration and Inspection

As the Lead Agency, the County will be responsible for project inspection and will designate a Project Inspector and a Project Representative to administer the contract. <Local Agency> will designate its own oversight inspector for the project. Should the <Local Agency> representative identify a discrepancy or variance from the approved plans and specifications, the <Local Agency> representative shall contact the Project Inspector first and if unavailable, then the Project Representative second to implement the necessary correction. If the <Local Agency> representative notices a violation of safety or environmental protection requirements requiring immediate attention, they shall contact the Project Inspector first and if unavailable, then the Project Representative second to implement corrective action.

Note: Pilot project experience showed that lack of clear chain of command paths led to confusion and conflicts, therefore, this area needs to be clearly established.

1.11 Ownership of Improvements

There will be no changes in facilities ownership due to any project improvements made, even if the improvements are made to private property.

1.12 Associated Agencies

Both parties will take steps necessary to inform and include <Associated Agency> in I/I reduction projects, including <be specific - communications, approvals, and involvement>.

Note: This section was not included in the original IGA template or in the actual IGA's for the pilots and was recommended as a valuable addition.

Addition to Section 2: County Responsibility of the Original Agreement
Section 2: King County Responsibilities

2.5 Scope of Work

King County will act as Lead Agency, and manage and administer the project. The project scope of work is attached hereto as Exhibit A "Scope of Work." If additional information is necessary to allow the project to function effectively, specific requests will be made in writing to <Local Agency>. A service map showing the area to be covered by this project is attached as part of Exhibit A.

Note: Some provision should be made to fix non-I/I related components when that is necessary to conduct I/I rehabilitation.

2.6 Environmental Review Process

The County agrees to prepare an Environmental Review Document highlighting the I/I Program with specific information about this project. <Local Agency> agrees to review the document prior to distribution.

2.7 Securing Applicable Permits

King County shall be responsible for securing all applicable local permits for the project including, but not limited to, building, right of way, utility, shorelines and critical areas permits.

2.8 Post-Construction Flow Monitoring

The County agrees to conduct post-construction flow monitoring within the project area between <date> and <date>. The County agrees to share with <Local Agency> the results of this flow-monitoring period.

2.9 Entering Contracts with Contractor

King County agrees to enter into contracts with independent contractors as necessary to complete the project per approved scope of work (Exhibit A). The County's consulting team will perform engineering and design oversight for bidding and engineering on the contractor hiring process.

2.10 Insurance

King County shall require its contractor(s) to procure, maintain and provide evidence of coverage, including endorsements naming <Local Agency>, its officers, officials, employees and agents as additional insured.

Addition to Section 3: District Responsibility of the Original Agreement Section 3: <Local Agency> Responsibilities

3.7 Securing Applicable Permits

<Local Agency> and King County agree to work cooperatively to secure all private property right of entry agreements with homeowners where necessary for the project. <Local Agency> agrees to accompany King County or its representative to meet with homeowners as necessary to explain the project and secure right-of-entry agreements.

3.8 Community Coordination and Communications

<Local Agency> and the County agree to jointly determine their roles for community coordination and communications for the project, and to jointly develop a public information/education plan for this project. The County agrees to assist in producing materials for public distribution.

3.9 Financial Provisions

The County agrees to pay for the work as detailed per Exhibit A "Scope of Work." Costs eligible for County payment are construction costs directly related to I/I removal within the scope of work of the project (Exhibit A), including but not limited to road overlay, post-construction restoration and private property restoration. Construction work done in conjunction with I/I project work such as system or capacity upgrades or projects <Local Agency> wishes to include for its own purposes such as separations of shared side sewers will not be eligible for King County payment. Where storm drain disconnections from the sanitary sewer are necessary,

the property owner shall be responsible for the re-routing of any disconnected and unauthorized drains. Costs to re-route storm drainage will not be eligible for County payment. The County will not pay for costs and expenses attributed to consultant services, contract procurement, administration and management or non-I/I related construction activity.

Note: Experience from the pilots indicate that financial responsibilities need to be established and agreed to by the Parties prior to beginning construction

<Use the “Modification to Section 7: Notice of the Original Agreement” that appears at the end of this document>

<Use this section when either the Local Agency or the County is the Lead Agency>

**Modification to Section 7: Notice of the Original Agreement
Section 7: Notice**

All Notices to the County or <Local Agency> required under terms of the Agreement and this Amendment shall be given in writing as follows:

To the County:

King County Department of Natural Resources and Parks
Wastewater Treatment Division
201 South Jackson St., MS KSC-NR-0512
Seattle, WA 98104
Attn: , Program Manager
Telephone: _____
Fax: _____

To <Local Agency>:

<Local Agency>
Address
Attn:
Telephone: _____
Fax: _____

IN WITNESS WHEREOF, the Parties have executed this Amendment No.1 to the Agreement for Infiltration/Inflow Program as of the date and year first written above.

<Local Agency>

Approved as to Form:

, Attorney
Representing <Local Agency>

<Local Agency>

Representing <Local Agency>

KING COUNTY

Approved as to Form:

Attorney WSBA #
Prosecuting Attorney

Director

Department of Natural Resources and Parks Approved as to Form:

Exhibit A: Project Scope of Work and Schedule

Exhibit B: Project Cost Estimate and Regional I/I Control Program Contribution

Exhibit B is only applicable if the Local Agency is the Lead Agency.

Guidance Table for Regional I/I Control Program Items

This Table is intended as a guide to what should or should not be considered eligible for
Regional I/I Control Program funding.

ITEM	✓ ELIGIBLE	✓ INELIGIBLE	COMMENTS
Staff and administration time directly related to the I/I Reduction Project, including salaries, wages, payroll expenses 1. Staff time or, 2. Staff time up to maximum or, 3. Staff time up to some percentage (say 10%)	✓		
Staff and administration time indirectly related to the I/I Reduction Project, including salaries, wages, payroll expenses 1. Staff time or, 2. Staff time up to maximum or, 3. Staff time up to some percentage (say 10%)		✓	
I/I Project related travel and transportation	✓		Per mile using federal standard, if directly related to Local Agency costs
General administrative and other overhead costs (non-labor)		✓	
Invoice preparation/Budget tracking/Process reports	✓		Related to the project
Interest and other financial costs. Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations.		✓	
Legal and other professional fees paid in connection with the I/I Reduction Project	✓		After agreement
Project related audit expenses performed in accordance with generally accepted auditing standards and King County Auditing Requirements	✓		Project specific audit
Public involvement as approved in a Public Involvement Plan	✓		
Permit fees	✓		
Preparation and costs associated with obtaining required federal/state/local regulatory approval	✓		
Property acquisition necessary for project	✓		Only if directly needed for I/I control
Condemnation	✓		
Predesign, investigations and design engineering services	✓		
Value engineering	✓		If required

Partnering session(s)	√		If needed
Advertising and Bidding	√		
Inspection as per standards	√		
Any expenses prior to IGA effective date		√	
Post inspection as per standards	√		
Signed construction contract amount	√		
Project site restoration that is beyond actual I/I reduction need and/or beyond agreed to standards, procedures, and policies			Is eligible if added as a permit condition
Change orders	√		Available up to project funding limits
Storm water facilities necessary to handle removed I/I			If part of scope of work as indicated in Exhibit A
I/I project additions by Local Agency/Associated Agency not indicated in standards and procedures and policies			Negotiated between County and Local Agency
Additions by Local Agency/Associated Agency not directly affiliated with I/I reduction		√	
Utility relocations necessary for I/I Reduction Projects as specified by the standards			If part of scope of work as indicated in Exhibit A
Other costs allowable subject to King County's approval. Although some category of expenditures are not mentioned specifically, should the Local Agency wish to seek King County participation, it is allowed to request approval from King County. If they agree to pay for that item, that would set a precedent for other projects. The expenditures that relate to the I/I Reduction Project should be well identified through proper documentation.			Negotiation or part of IGA
Bad debts. Any losses arising from uncollectable accounts and other claims and related costs.	√	√	If Local Agency or King County error, not eligible. If part of project and not covered by insurance, will be covered
Contributions and donations.		√	
Entertainment. Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities.		√	
Fines and penalties. Costs resulting from violations of or failure to comply with federal, state, and local laws and regulations.	√	√	Eligible if part of I/I reduction project and not covered by insurance

Legislative expenses. Salaries and other expenses of the state legislature or similar local governmental bodies, such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are unallowable.		√	
Liability judgments against the Local Agency.	√	√	Eligible if part of I/I reduction project and not covered by insurance